

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 05-44481(RDD)

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5 In the Matter of:

6

7 DPH HOLDINGS CORP., ET AL.,

8

9 Debtors.

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13 U.S. Bankruptcy Court

14 300 Quarropas Street

15 White Plains, New York

16

17 April 25, 2013

18 10:09 AM

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20 B E F O R E :

21 HON ROBERT D. DRAIN

22 U.S. BANKRUPTCY JUDGE

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1 Hearing re: Notice of Agenda Proposed Sixtieth Claims

2 Hearing Agenda

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4 Hearing re: Notice of Agenda Proposed Eighty-Second Omnibus

5 Hearing Agenda

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7 Hearing re: Debtors' Motion For Order (I) Enforcing

8 Modification Procedures Order, Modified Plan and Plan

9 Modification Order Injunction and Thirty-Seventh Omnibus

10 Claims Objection Order Against James Sumpter, as Plaintiff,

11 in Federal Court ERISA Action; and (II) Directing James

12 Sumpter to Dismiss Federal Court ERISA Action Against the

13 Reorganized Debtors and the Reorganized Debtors Life and

14 Disability Benefits Program (related document(s) #22040)

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25 Transcribed by: Dawn South

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8 BY: CYNTHIA J. HAFFEY, ESQ.

9

10 ALSO PRESENT TELEPHONICALLY:

11 JAMES SUMPTER - PRO SE

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P R O C E E D I N G S

THE CLERK: All rise.

THE COURT: Please be seated. Okay, good morning. In re: DPH holdings.

MS. HAFHEY: Good morning, Your Honor, Cynthia Haffey on behalf of the reorganized debtors.

If it's all right with Your Honor could I stay at counsel table this morning?

THE COURT: Just as long as the microphone picks you up, because we have Mr. Sumpter on the phone. Can you hear Ms. Haffey, Mr. Sumpter?

MR. SUMPTER: Yes, I can.

THE COURT: Okay. Good morning.

MS. HAFHEY: Good morning, Mr. Sumpter.

MR. SUMPTER: Good morning.

MS. HAFHEY: First, Your Honor, let me go through the agendas for today.

The proposed sixtieth claims hearing agenda. There are a continued or adjourned matter the sufficiency hearing regarding proofs of administrative expense claims numbers 19715 and 19716.

The hearing with respect to this matter has been adjourned until June 20th, 2013 pursuant to the notice of adjournment of sufficiency hearing with respect to the reorganized debtors' objections to proof

1 of administrative Expense claim numbers 19715 and  
2 19716, docket number 22045.

3 The eighty-second omnibus hearing agenda, the  
4 only matter up before the Court today is the Sumpter  
5 ERISA injunction motion.

6 Responses were filed by Mr. Sumpter,  
7 including a letter response to which we replied to as  
8 well by letter and a formal response to which a reply  
9 was filed by the reorganized debtors. Mr. Sumpter's  
10 response is docket number 22048 and the reorganized  
11 debtors' reply is 22049.

12 Before we proceed with that motion,  
13 Your Honor, let me just give you a brief update if you  
14 would like in regards to the claims matters as well as  
15 the adversary proceedings.

16 There are only 17 proofs of claims left to be  
17 resolved, and 15 preference actions left to be resolved  
18 of which 5 of those will likely be dismissed within the  
19 next month.

20 THE COURT: Okay. And the proofs of claims,  
21 those are all administrative claims?

22 MS. HAFLEY: They are. They --

23 UNIDENTIFIED SPEAKER: There's three  
24 prepetition (indiscernible) specific.

25 THE COURT: Okay. Which would given the

1 assumption of their agreements be administrative.

2 UNIDENTIFIED SPEAKER: Yes.

3 THE COURT: Okay.

4 MS. HAFLEY: Okay. This is the reorganized  
5 debtors' motion, Your Honor, for an injunction to seek  
6 an order from this Court to require that Mr. Sumpter  
7 dismiss with prejudice an action that he filed in the  
8 United States District Court Southern District of  
9 Indiana. The order -- excuse me -- our motion seeks an  
10 order enjoining that action. The Federal Court action  
11 seeks relief that has already been previously  
12 disallowed and enjoined --

13 THE COURT: Before we get into the merits of  
14 the injunction motion can you tell me what, if  
15 anything, is happening in the SD Indiana action?

16 And I say this because separate and apart  
17 from issues of jurisdiction and the merits I could not  
18 really tell from the pleadings -- although the action  
19 was filed very recently -- whether the District Court  
20 in Indiana is either on the one hand aware of your  
21 present motion and expressed some view that it's fine  
22 if it goes forward or on the other hand moving ahead  
23 with its own determination as to the applicability of  
24 the discharge injunction or the other injunction under  
25 the plan or the res judicata issues or perhaps

1 something in the middle where nothing has happened and  
2 District Court hasn't taken a position on this action  
3 because really nothing has happened in front of it.

4 And I say that because it's clear to me that  
5 the District Court does I think have jurisdiction to  
6 consider these issues, to consider the effect of the  
7 discharge, to consider the injunction, to consider  
8 res judicata, they could all be defenses that would be  
9 asserted. I don't think it has exclusive jurisdiction,  
10 but it has jurisdiction, and I don't want to get  
11 crosswise with another court if another court has  
12 already been working on something on these issues.

13 MS. HAFLEY: I appreciate that, Your Honor.  
14 Only a little bit has happened.

15 As you noted, Mr. Sumpter's complaint was  
16 only recently filed -- excuse me -- an initial --

17 THE COURT: And that was -- it was in March,  
18 right? I think.

19 MS. HAFLEY: I have it in front of me, I can  
20 give you the date in just a moment. That's correct,  
21 Your Honor, March 4th --

22 THE COURT: Okay.

23 MS. HAFLEY: -- 2013 is when it was signed by  
24 Mr. Sumpter, so on or about that date.

25 THE COURT: Okay.

1 MS. HAFLEY: And when the reorganized  
2 debtors' initial answer was due we did receive an  
3 extension from the court pretty much just as a matter  
4 of right in that -- in that court. This motion was  
5 then filed in this court. We then filed a motion for  
6 an extension to respond to the complaint with the  
7 Indiana court --

8 THE COURT: And that motion --

9 MS. HAFLEY: -- alerting --

10 THE COURT: -- that motion referenced this  
11 motion?

12 MS. HAFLEY: It did, and I think we even  
13 attached it --

14 THE COURT: Okay.

15 MS. HAFLEY: -- Your Honor. We have asked  
16 Mr. Sumpter to concur in that motion and he never  
17 responded to that request, but the judge did grant our  
18 request, and the order provides that our response to  
19 the complaint in the Indiana action isn't due until two  
20 weeks after this Court enters an order in regards to  
21 this motion.

22 THE COURT: Okay. So the Indiana judge is  
23 aware of this motion, and I guess as part of your  
24 motion -- is it a him or a her?

25 MS. HAFLEY: It's a her.



1 THE COURT: Your motion in front of her,  
2 Mr. Sumpter did have the opportunity to say, no, you  
3 should be deciding this, Indiana Judge, not Judge Drain  
4 and --

5 MR. SUMPTER: That's not --

6 THE COURT: -- whether that opportunity was  
7 taken or not the Indiana court has extended the time to  
8 answer.

9 MS. HAFLEY: She did extend the time, the  
10 Court rendered its decision on that motion pretty much  
11 within 24 or 48 hours, so I think Mr. Sumpter was  
12 probably just about to tell you that he didn't really  
13 have an opportunity to respond to that because she did  
14 render the decision and enter an order --

15 THE COURT: Right. Okay.

16 MS. HAFLEY: -- almost immediately.

17 THE COURT: Any way -- in any event the  
18 Indiana court is aware of this and --

19 MS. HAFLEY: That's correct.

20 THE COURT: -- this is different than I  
21 gather what happened to Judge Easterbrook in In re:  
22 Mahurkar Double Lumen Hemodialysis Catheter Patent  
23 litigation, 140 B.R. 949 N.D. Illinois, 1992, where I  
24 think he felt he was blindsided by an ex parte action  
25 in the Bankruptcy Court to issue an injunction when he

1 had already scheduled briefing on the issues in front  
2 of him.

3 MS. HAFLEY: Yes, Your Honor --

4 THE COURT: Okay.

5 MS. HAFLEY: -- it is entirely different.

6 Nothing --

7 THE COURT: All right.

8 MS. HAFLEY: -- other than what I have just  
9 stated to you has happened in that action.

10 THE COURT: Okay. Do you disagree with any  
11 of that, Mr. Sumpter?

12 MR. SUMPTER: The only part I disagree with  
13 is I have not had an opportunity to respond to the  
14 Court as far as that extension of time.

15 THE COURT: The District Court.

16 MR. SUMPTER: Yes.

17 THE COURT: Right. No, I understood that  
18 from what Ms. Haffey said, but on the other hand I'm  
19 not going to second guess the District Court's decision  
20 to rule promptly on the motion that DPH filed in that  
21 action. So -- okay.

22 So, Ms. Haffey, I'm sorry I interrupted you,  
23 but why don't you go ahead then.

24 MS. HAFLEY: The relevant facts and timeline  
25 of this case are important so let me just briefly

1 review those with the Court.

2 Mr. Sumpter seeks a life insurance payout  
3 that was never a benefit that he was entitled to under  
4 Delphi's plan or for that matter General Motors' plan.  
5 I know that he disputes that, but again, the timeline  
6 is important. The benefit was terminated by General  
7 Motors in the mid-90s.

8 Mr. Sumpter first requested the benefit with  
9 Delphi corporation in 2004. He again made the request  
10 -- and he was provided a form my understanding is at  
11 that time and that he says was the wrong form, and I  
12 can only presume it was because the benefit wasn't  
13 offered under the benefits plan -- but nothing happened  
14 after 2004. He did not pursue the benefit. Until  
15 again he made a request in March 12th of 2009.

16 The claims administrator denied the claim on  
17 June 3rd, 2009, and on June 11th, Mr. Sumpter, formally  
18 requested a copy of all the documents and records,  
19 including the summary plan description for salaried  
20 employees and requested that the administrator  
21 specifically state which SPD had been relied on when it  
22 made its decision.

23 On July 6th Mr. Sumpter informed the claims  
24 administrator that he intended to appeal the decision  
25 of the denial benefits, and in that letter he stated

1 that he was aware of the Delphi bankruptcy and his need  
2 to preserve his claim by filing an administrative  
3 claim.

4 On July 8th he did then file his  
5 administrative claim seeking the life insurance payout  
6 that he had already been denied and he attached to that  
7 claim various letters between himself and the claims  
8 administrator again referencing the issue about which  
9 SPD controlled.

10 THE COURT: And I know this acronym is used a  
11 lot, but SPD stands for?

12 MS. HAFLEY: Summary plan description.

13 THE COURT: Okay.

14 MS. HAFLEY: On July 15th the benefit  
15 administrator responded to Mr. Sumpter's requests in  
16 writing in a letter and provided him with a copy of  
17 that summary plan description for salaried employees  
18 and also provided him with the other information that  
19 he requested in the letter. That information actually  
20 had also been sent to him on July 6th via an email.

21 On July 31st Mr. Sumpter formally appealed  
22 the decision of the denial of benefits, and in that  
23 appeal he asserted again that the General Motors' SPD  
24 controlled.

25 According to this Court's orders the bar date

1 for administrative claims from --

2 THE COURT: And I'm sorry, and the documents  
3 that the administrator provided in July, including the  
4 SPD, were not the GM one, it was the Delphi one?

5 MS. HAFLEY: It was the Delphi.

6 THE COURT: All right. And that's attached  
7 -- that correspondence is attached to the pleadings and  
8 the proof of claim I think, right?

9 MS. HAFLEY: The proof of claim is attached  
10 to the pleadings as well as the letters. I don't know  
11 if that actual SPD is attached, Your Honor, but I do  
12 believe I have a copy of it with me if it's not that I  
13 can provide to the Court.

14 THE COURT: Well, no, I -- it's less -- I  
15 don't want to review the SPD, I just -- I'm confirming  
16 my recollection that the letter is referred to  
17 providing the SPD, and the SPD that was provided was  
18 the Delphi one.

19 MS. HAFLEY: That's correct, Your Honor.

20 So as this Court knows the bar date for  
21 administrative claims was July 15th, 2009, and the bar  
22 date for final administrative expenses, those claims  
23 that arose between June 1st, 2009 and October 5th,  
24 2009, was on November 5th, 2009.

25 On October 15th of 2009 the reorganized

1 debtors filed their objection to Mr. Sumpter's  
2 administrative claim. He did not respond to that  
3 claim. He did receive notice of the objection. I know  
4 he states in his response that he did not, but I  
5 believe, and I obviously can't speak for Mr. Sumpter,  
6 but it appears that he has a misreading of the  
7 affidavit of service in the exhibits attached to it  
8 where it refers to Exhibit E and he saw his name in  
9 Exhibit F. Well that Exhibit F was actually an  
10 attachment to the Exhibit E of the notice. And in our  
11 reply brief we attached those for this Court to see how  
12 there could have been a confusion.

13 But he did receive notice. The address as  
14 provided on that notice is the address that Mr. Sumpter  
15 used in his correspondence almost recently with this  
16 Court as well as with the claims administrator.

17 Mr. Sumpter never filed a final  
18 administrative claim.

19 On December 2nd this Court entered an order  
20 disallowing and expunging Mr. Sumpter's administrative  
21 claim, and of course our position is that all the  
22 claims asserted by Mr. Sumpter in the Federal Court  
23 action pending in Indiana were expunged and disallowed  
24 by this Court's orders.

25 And if you would like, Your Honor, I can go

1 through the actual cause of actions. There are five of  
2 them in that action that are pending against DPH or the  
3 plan.

4 There is a -- one cause of action that is  
5 against the planned administrator, only MetLife.

6 THE COURT: I think that's worthwhile to go  
7 through the causes of action.

8 MS. HAFLEY: Okay.

9 THE COURT: And I have a copy of the  
10 complaint here which is attached as an exhibit,  
11 Exhibit B.

12 MS. HAFLEY: So the first cause of action,  
13 Your Honor, is for failure to pay the disability life  
14 insurance benefit. And in that claim he -- Mr. Sumpter  
15 claims he's entitled to a benefit in the form of a  
16 \$100,000 disability life insurance pay out. And if you  
17 refer to the administrative claim it is on the face of  
18 the claim life insurance claim disability early payout  
19 and he's seeking \$97,788. It is the identical claim  
20 that Mr. Sumpter sought at that time.

21 In the second cause of action -- it's  
22 entitled second cause of action for failure to meet  
23 ERISA notice requirement for distribution of summary  
24 plan description.

25 Mr. Sumpter asserts that the plan

1 administrator failed to provide the 1996 SPD for the  
2 period between July 30th, '97 and November 5th, 2009.

3 THE COURT: Okay.

4 MS. HAFLEY: And again, the question of which  
5 SPD was proper and whether he had received SPDs was  
6 already an issue and was in -- stated in Mr. Sumpter's  
7 correspondence with the plan administrator as early as  
8 -- and I got to go back to my note, excuse me,  
9 Your Honor -- June 11th of 2009 when he formally  
10 requested a copy of all documents, records, and  
11 including the summary plan description, and he  
12 requested that the administrator specifically state  
13 which SPD was believed to be in force.

14 The third --

15 MR. SUMPTER: Excuse me, is it possible to  
16 interrupt, Your Honor?

17 THE COURT: Sure. I was going to interrupt  
18 at that point too.

19 MR. SUMPTER: Just for the record this is  
20 James Sumpter.

21 THE COURT: Right. You don't have to  
22 identify yourself each time you speak because you're  
23 the only one on the phone.

24 MR. SUMPTER: Okay.

25 THE COURT: But before you -- before you



1 speak -- and I'm going to let you speak on this -- this  
2 point.

3 So as I gather it with regard to the second  
4 cause of action in the District Court complaint the  
5 debtors contend that the cause of action is premised  
6 upon the plan administrator through its agents not  
7 providing the correct SPD, not providing the correct  
8 information with regard to the SPD. And the debtors'  
9 contention is that Mr. Sumpter could have determined,  
10 based on the provision by the administrator in July in  
11 response to his request from June for the documents of  
12 only the Delphi SPD, that that cause of action was  
13 known or knowable to Mr. Sumpter then, at least in July  
14 of 2009 because of the documents provided the  
15 administrator took the view that the applicable SPD was  
16 the Delphi one, not the GM one.

17 MS. HAFLEY: That's correct, Your Honor.

18 THE COURT: Okay. So, Mr. Sumpter, you can  
19 -- you can address that point now with regard to the  
20 second cause of action.

21 MR. SUMPTER: Well, in the appeal process  
22 when I had the communications with the person who was  
23 doing the review when we had the discussion about which  
24 SPD was governing he indicated that an SPD had been  
25 released in 1996, which is -- was new information. And

1 so it wasn't until December that he provided a copy of  
2 that SPD.

3 THE COURT: But that was the GM one, right?

4 MR. SUMPTER: Yes.

5 THE COURT: It must have been.

6 MR. SUMPTER: (Indiscernible - 00:18:32) of  
7 1996.

8 THE COURT: Right.

9 MR. SUMPTER: Now the summary -- I was not  
10 aware of this until -- that this SPD even existed until  
11 October I guess it was or somewhere in the December or  
12 whenever it was of 2009.

13 The SPD that I contend, and I still do, that  
14 governs my benefits is the GM 1992 SPD, because the  
15 1996 was never distributed. And I challenged them on  
16 that.

17 And he later -- I'm going to get a little  
18 ahead, but I think it'll benefit us -- gave me a copy  
19 of an enrollment document for 1994, and it was in the  
20 enrollment document that he asserts the change is  
21 actually made.

22 And so the reason I have this claim for the  
23 1996, if according to ERISA rules if they had made a  
24 change then they were supposed to publish a 199 --  
25 distribute a 1996 SPD, which they never distributed,

1 which is part of the reason that I have a problem here.  
2 Is that had they followed the procedures there wouldn't  
3 be an issue now if that was the case.

4 And so that's why I have this -- this action  
5 regarding the failure to provide notice as far as that  
6 SPD is concerned. But that SPD was not known to me  
7 until whenever -- maybe it was December of -- I think  
8 December is the right month of 2009.

9 THE COURT: Well, let me ask you two  
10 questions in response to that.

11 The first is, why is it that if you had known  
12 of a 1996 one you would have acted differently?

13 MR. SUMPTER: Well, if I had known of the  
14 1996 one it would have meant that I wasn't entitled to  
15 the benefit or it would have meant that the benefit has  
16 been canceled -- that option had been canceled. And so  
17 I wouldn't be involved in this at all, I wouldn't have  
18 had that expectation.

19 THE COURT: Right. Okay.

20 MR. SUMPTER: But when I became disabled that  
21 I had that option.

22 THE COURT: Right. And I assume that was  
23 going to be your answer and I understand it. But let  
24 me ask you the second question.

25 When Delphi -- the plan administrator took

1 the position that your benefits -- your claimed benefit  
2 to this \$100,000 was denied that was based on neither  
3 the 1996 nor the 1992 policy, it was based on a later  
4 policy, right?

5 MR. SUMPTER: It was based on the later  
6 summary plan description.

7 THE COURT: All right.

8 MR. SUMPTER: It was based on the 2001  
9 summary plan description.

10 THE COURT: So at that point I mean you  
11 basically assumed there was another policy, right?

12 MR. SUMPTER: No -- well, the -- what my  
13 argument is, is that the summary plan description that  
14 was in effect when I became disabled is the one that  
15 governs my --

16 THE COURT: No, I understand that. I  
17 understand that. But I'm focusing on -- I'm focusing  
18 on this second claim, this second cause of action in  
19 your complaint.

20 MR. SUMPTER: Okay.

21 THE COURT: And it's basically a cause of  
22 action premised upon your contention that the plan  
23 administrator, and through it, Delphi, did not provide  
24 you with the 1996 amendment, that you learned about  
25 that only later.

1 MR. SUMPTER: That's right.

2 THE COURT: And that you would have acted  
3 differently in your planning and in your decision to do  
4 the \$100,000 election if you would had known about the  
5 1996 issue.

6 MR. SUMPTER: Yes.

7 THE COURT: And I understand that, but it  
8 seems to me that when Delphi took the position in the  
9 response to all the documents -- the request to provide  
10 the documents, which they did in July of 2009, weren't  
11 you on notice that Delphi was relying on something  
12 other than the document you thought controlled?

13 MR. SUMPTER: Yes, I was aware of that.

14 THE COURT: Okay.

15 MR. SUMPTER: But that's the -- I mean that's  
16 the dispute. They were relying on a document that was  
17 published after I became disabled.

18 THE COURT: Right. But again, this is --  
19 this is -- I'm focusing at this point on this issue,  
20 not on the merits --

21 MR. SUMPTER: Okay.

22 THE COURT: -- but on the timing, and what it  
23 was that you knew or could have known or could have  
24 done and whether you knew that or could have known it  
25 as far as having a potential claim against, among

1 others, Delphi based on the disclosure of the -- of the  
2 documents.

3 And it seems to me as long as -- I mean the  
4 debtors' argument is that as long as you knew or could  
5 have known based on what -- on the information you had  
6 before either of the two bar dates and/or the hearing  
7 on the claim objection that at this point you --

8 MR. SUMPTER: Well, I think --

9 THE COURT: -- you can't pursue that claim  
10 because it's discharged and/or it's been disallowed.

11 MR. SUMPTER: Well, I think I can answer that  
12 question.

13 THE COURT: Okay.

14 MR. SUMPTER: In July, as far as I was aware,  
15 there were only two summary plan descriptions, in 1992  
16 and in 2001.

17 Now, the reason that I can -- and I wasn't  
18 aware of the 1996 -- and the reason I could file this  
19 second cause of action regarding the 1996 is that the  
20 ERISA requirement is if there's a change in the plan  
21 you have to publish a document within five years.

22 So they made a change in 1994 and the five  
23 years would go back to 1992 or whatever. So they made  
24 -- apparently they should have distributed this 1996  
25 document.

1 THE COURT: Within five years.

2 MR. SUMPTER: I'm sorry?

3 THE COURT: Within five years of that  
4 document. So 2001.

5 MR. SUMPTER: Within five years of -- every  
6 -- they have to -- they have to -- like five years from  
7 1992.

8 THE COURT: Right. Either '92 or '96,  
9 whenever it came out.

10 MR. SUMPTER: Right.

11 THE COURT: Okay.

12 MR. SUMPTER: So it was during that process  
13 that I learned that they made a change and failed to  
14 submit or publish the SPD, and so that's what this  
15 second cause of action is about. They made a change  
16 and failed to publish this SPD. And I -- there was no  
17 way I would have known that until it was revealed to me  
18 during the appeal process.

19 THE COURT: Well, okay. I'm going to  
20 anticipate what the debtors are going say on this.

21 The first is that that error on their part,  
22 that wrong on their part, assuming it was not disclosed  
23 as you've stated, is rooted in the prebankruptcy past,  
24 you know, that it started -- the obligation to disclose  
25 the 1996 SPD started when it was issued in 1996 and

1 continued for five years thereafter.

2 MS. HAFLEY: And if I could just --

3 MR. SUMPTER: Okay.

4 MS. HAFLEY: -- interject, Your Honor, of  
5 course at that the time it was General Motors'  
6 obligation.

7 THE COURT: Right. But -- that's fair, but I  
8 guess the argument is that Delphi assumed that  
9 responsibility.

10 The second -- the second argument the debtors  
11 going make, which is -- is as follows.

12 Assuming for the moment that you still have a  
13 claim for that, even though it's rooted in the  
14 prebankruptcy past, and so therefore it really would  
15 have been covered by the first bar date in the case,  
16 which covers the prepetition claims, it was capable of  
17 detection by you based on the facts you did know, which  
18 is that Delphi was relying on a different document,  
19 it's own SPD, which is what the plan administrator  
20 provided to you in July, but what it was basically  
21 referring to in its denial letters, and you were  
22 relying on a 1992 SPD from GM.

23 But basically given that distinction one  
24 could have asked for those documents and gotten them  
25 well before the date passed to file an admin claim



1 and/or object to the claim objection, and it didn't  
2 happen.

3 I guess I see some logic to both of those  
4 arguments. I'm not sure what your claim would have  
5 been based on the failure to disclose the 1996 SPD  
6 other than something rooted in the prebankruptcy past,  
7 and that's under the Bankruptcy Code not an  
8 administrative claim, it's a prebankruptcy claim.

9 There is the issue of whether you had notice  
10 of it to assert that claim, but I think -- well, I'll  
11 have to decide this -- but I think there's a pretty  
12 good argument to say that it was capable of detection  
13 before the bar dates passed.

14 MS. HAFLEY: In particular, Your Honor, since  
15 Mr. Sumpter did first request the benefit in March of  
16 -- I think it was March of 2004 and then just let it  
17 drop and went no further, if he had pursued it at that  
18 time it certainly would have been discovered.

19 THE COURT: Okay.

20 MR. SUMPTER: Well, let me comment on that.  
21 Because I actually started work on this in December of  
22 2003, and the problem -- and I have an extensive  
23 communication record that, you know, I was prepared to  
24 provide when this issue arose in the District Court, I  
25 wasn't prepared to litigate it here, but -- and so I --

1 at that same time I submitted my letter and I submitted  
2 the appropriate sections from the summary plan  
3 description and identified the summary plan description  
4 that I was relying on, and I did that in 2009 also.

5 THE COURT: Right.

6 MR. SUMPTER: And -- but I was dealing with  
7 people who were -- which we had a problem with the  
8 benefit center. They were uninformed or their first  
9 level firewall was just a frustration for me at the  
10 time when I couldn't manage it health wise.

11 And the way this benefit works, it could not  
12 be paid before October 2010, because that was when --  
13 it only is paid when your supplemental disability  
14 starts. And my supplemental disability benefit did not  
15 start until October 15, 2010.

16 THE COURT: Right.

17 MR. SUMPTER: So when they sent me a form for  
18 terminally ill payout I decided I would wait until I  
19 had more opportunity or whatever, I had time to pursue  
20 -- I had time to pursue it as long as that benefit  
21 wasn't canceled even after I was receiving my  
22 supplemental. So I wasn't -- I was -- I had plenty of  
23 time to pursue it.

24 Now when the OPEB order became a threat it  
25 became imperative for me that I do it before April 1 of

1           2009, and that's when I filed again. And at that time  
2           in fact they did send me the correct form.

3                   THE COURT: Right. I accept all of that, but  
4           -- and again, if Delphi weren't in bankruptcy you might  
5           have a claim for all that that would get paid in  
6           hundred cent dollars, but given that it is in  
7           bankruptcy and the Bankruptcy Code makes a distinction  
8           between prebankruptcy and post-bankruptcy claims -- and  
9           that's what we're talking about here. We're not  
10          talking about -- you know, we're really talking about  
11          timing issues as opposed to the underlying merits. And  
12          the timing issue here is such I think that the claim  
13          was asserted in the prebankruptcy period, Delphi under  
14          your argument, which for purposes of this analysis I'm  
15          accepting, didn't provide the underlying document that  
16          changed the GM plan, and all of that was really a  
17          prebankruptcy process. And your point is you would  
18          have done things differently if they had provided it,  
19          but they didn't, and again, that was something that  
20          happened prebankruptcy.

21                   So I think I understand the facts as alleged  
22          here that underlie this cause of action.

23                   I'm going to think a little bit about, you  
24          know, what they mean as far as your right to get paid  
25          as a claim against Delphi --

1 MR. SUMPTER: Okay. May I ask one --

2 THE COURT: -- but I think we should move on  
3 to the third cause of action --

4 MR. SUMPTER: Okay.

5 THE COURT: -- asserted in the complaint.

6 MR. SUMPTER: Your Honor, if I could add one  
7 piece of information I think will be -- at least I  
8 think will be helpful.

9 The -- this particular cause of action is  
10 allowed under ERISA, and it actually is a cause of  
11 action for the benefit of the government.

12 THE COURT: But you're looking for equitable  
13 relief, you're looking to be paid money by Delphi to  
14 you, right?

15 MR. SUMPTER: Yeah, what -- yes, that's  
16 right. What I'm doing is in each one of those causes  
17 of actions somehow or another I want to get my  
18 \$100,000.

19 THE COURT: Right.

20 MR. SUMPTER: But the -- if I was to prevail  
21 in this second cause of action it would mean that DPH  
22 would owe the government \$200,000.

23 THE COURT: Well -- all right.

24 MR. SUMPTER: And I don't know if there's a  
25 distinction about --

1 THE COURT: That's not the relief you're  
2 seeking though.

3 MR. SUMPTER: I'm sorry?

4 THE COURT: That's not the relief you're  
5 seeking. You're seeking relief, quote, "appropriate  
6 equitable relief" to be paid in essence the \$100,000,  
7 and that's within the definition in the Bankruptcy Code  
8 of the term claim, which is in 1015 of the Bankruptcy  
9 Code, which refers to a right to payment or a right to  
10 an equitable remedy for breach of performance if such  
11 breach gives rise to a right to payment in each case  
12 whether or not reduced to judgment, liquidated,  
13 unliquidated, fixed, contingent, matured, unmature,  
14 disputed, undisputed, legal equitable, secured, or  
15 unsecured.

16 So once you're looking for payment it falls  
17 into the Bankruptcy Code claim structure or claim  
18 regime that, you know, along with all the other people  
19 that are asking for money from the debtor.

20 MR. SUMPTER: Okay.

21 THE COURT: Okay.

22 MS. HAFLEY: The third cause of action,  
23 Your Honor, is virtually identical to the second cause  
24 of action, with the exception that rather than the SPD  
25 it's a claim of having not received the summary

1 material modification during the same time frame.

2 THE COURT: Which is the summary of the  
3 1996 --

4 MS. HAFLEY: The change.

5 THE COURT: -- change.

6 MS. HAFLEY: That's correct.

7 MR. SUMPTER: Judge, actually the claim took  
8 place in -- it actually took place January 1, 1995.

9 THE COURT: I'm sorry.

10 MR. SUMPTER: The change actually went into  
11 effect January 1, 1995.

12 THE COURT: Okay. But it --

13 MR. SUMPTER: The summary --

14 THE COURT: I'm sorry, go ahead.

15 MR. SUMPTER: The summary of material  
16 modification, you know, can't be published until after  
17 the change goes into effect, and it has like 180 days  
18 to do that or whatever.

19 THE COURT: Right.

20 MR. SUMPTER: So -- but that's -- that's just  
21 an additional violation that I see.

22 THE COURT: Okay. But again, it seems to me  
23 to be quite similar to cause of action number two,  
24 which is it arose in the prebankruptcy period because  
25 GM at that time, then Delphi having assumed the

1 obligation, had an obligation by mid-1995 to provide  
2 this summary.

3 And again, I understand if you had had that  
4 summary you might have done your planning differently,  
5 you wouldn't have planned to, you know, deal with this  
6 asset the way you eventually did, but I think -- I  
7 think the debtors' response on this -- on cause of  
8 action number two would apply to this one too, which is  
9 that it's rooted in the prebankruptcy past, to the  
10 extent that no one would have known about the summary  
11 given the plan administrator's explanation of the  
12 denial of your request in June of 2000 -- well, yeah,  
13 in June of 2009 and then the provision of the documents  
14 upon which that denial was based, the debtors will say  
15 that that was -- this issue was reasonably detectable  
16 at least by then, if not before then, and then they're  
17 going to rely on the bar dates and the plan injunction  
18 and discharge.

19 So that even though you say you didn't  
20 actually learn of this until after October 6th they'll  
21 say, well, it could have been found out by you before  
22 then.

23 MR. SUMPTER: If I could respond to that.

24 I don't know how you could find it out. The  
25 only way I found it out was when I got to the more

1           authoritative level in the company, in the  
2           administration, and they informed me of it. But the  
3           first level of people don't have that kind of knowledge  
4           and expertise. I don't know how I would have been able  
5           to find out.

6                   THE COURT: But --

7                   MR. SUMPTER: I could have assumed that there  
8           was another change in it.

9                   THE COURT: But you knew that they were  
10          relying on a different document.

11                  MR. SUMPTER: Yes, I knew they were relying  
12          on 2001.

13                  THE COURT: Right. So the debtors will say,  
14          well, okay, you knew that that's what they were relying  
15          on. In some respects the provision of this other  
16          document at that point doesn't matter because they were  
17          relying on a different one. It's not like they were  
18          relying on the 1996 one.

19                  MR. SUMPTER: Well, what I knew is they were  
20          relying on a document that didn't apply to me --

21                  THE COURT: Right.

22                  MR. SUMPTER: -- because it was published  
23          after I became disabled.

24                  THE COURT: Right.

25                  MR. SUMPTER: And what I believed was the



1 document they should have been relying on was the only  
2 one that had been distributed --

3 THE COURT: Okay.

4 MR. SUMPTER: -- and there's other evidence  
5 of this --

6 THE COURT: All right.

7 MR. SUMPTER: -- was the 1992 one.

8 THE COURT: Okay.

9 MS. HAFLEY: The fourth cause of action,  
10 Your Honor, is entitled fourth cause of action for  
11 failure to meet ERISA claim procedure notice  
12 requirements.

13 And in that allegation Mr. Sumpter asserts  
14 that the reorganized debtors failed to provide a timely  
15 response to his first appeal of its adverse decision.

16 We have two arguments in regards to that,  
17 Your Honor.

18 First of all the response time that's  
19 required is 45 days. The allegation we believe under  
20 the doctrine of res judicata which bars cause of action  
21 that arise from the same operative nucleus of facts  
22 therefore under the first expungement there's an  
23 argument to be made for res judicata in regards to his  
24 fourth cause of action. But in --

25 THE COURT: Which was December 2, 2009.

1 MS. HAFLEY: That's correct, Your Honor.

2 THE COURT: And the -- let's see, if the  
3 adverse decision was appealed from -- what, at the end  
4 of July, right?

5 MS. HAFLEY: July 17th, I believe, 2009, is  
6 when Mr. Sumpter submitted his appeal.

7 MR. SUMPTER: July 31.

8 MS. HAFLEY: July 31, excuse me.

9 THE COURT: July 31. I thought it was the  
10 end of July. Yeah, July 31.

11 MS. HAFLEY: So --

12 THE COURT: So that would make it --

13 MS. HAFLEY: So the notice -- 45 days after  
14 that is September 14th, 2009. So the response was due  
15 on that date. So his action then arose on  
16 September 15th. So it certainly was covered under this  
17 Court's final administrative order because it fell  
18 within that time frame between June 1st and October --  
19 was it October 5th is the effective date? And  
20 therefore he had to file that final administrative bar  
21 date claim by November 5th or it was barred.

22 THE COURT: Okay. I also -- all right. And  
23 your first argument is that --

24 MS. HAFLEY: Because it's a --

25 THE COURT: -- if you're going to be

1 defending against the claim objection that you made to  
2 the admin claim that he did file in July you would have  
3 known about this delay or could have known about the  
4 delay, if it was actionable, by the end of November and  
5 the order was entered in December.

6 MS. HAFLEY: He would have known about it by  
7 September 15th.

8 THE COURT: He would have known about it by  
9 September 15th --

10 MS. HAFLEY: Right.

11 THE COURT: -- and you're saying that's the  
12 same --

13 MS. HAFLEY: He mentioned --

14 THE COURT: -- same core facts basically --

15 MS. HAFLEY: Right.

16 THE COURT: -- which is -- well --

17 MS. HAFLEY: Well, in fact in his  
18 administrative claim, again he attached various  
19 letters, and in those letters he told the claims  
20 administrator he was going to appeal.

21 THE COURT: Right.

22 MS. HAFLEY: So his decision to appeal was  
23 already there, he never sought to amend that  
24 administrative claim nor did he object -- or excuse me  
25 -- respond to the reorganized debtor objection to the

1 that claim. So --

2 THE COURT: Right.

3 MS. HAFLEY: -- again, my argument is in that  
4 same --

5 THE COURT: Well, I mean it's a little odd  
6 because he filed a claim before the appeal. He's  
7 referring to intention to appeal, but I guess I don't  
8 really -- I'm not sure it would be res judicata.

9 I think that I understand your second  
10 argument which is that it's barred by the second  
11 administrative bar date.

12 MS. HAFLEY: Right.

13 THE COURT: But as far as res judicata, I  
14 mean he filed a claim based upon his belief that he was  
15 entitled to take this action, not that they delayed in  
16 responding to his appeal, because he hadn't appealed  
17 yet.

18 MS. HAFLEY: Well, this particular cause of  
19 action is in regards to their delay in responding to  
20 his appeal.

21 THE COURT: I understand.

22 MS. HAFLEY: Okay, sorry.

23 THE COURT: But as far as res judicata is  
24 concerned I don't think the order granting the debtors'  
25 objection to his administrative claim, which was filed

1 before he even filed an appeal, could really be one  
2 that would be res judicata on the plan administrator's  
3 undue delay in answering that appeal, because the  
4 appeal hadn't been filed yet. So I think it's a  
5 different set of facts.

6 But I understand your second argument, which  
7 is that as of September 14, which is well before the  
8 bar date of November 5, and also before the October 5th  
9 cutoff date for the -- for claims that was known to  
10 Mr. Sumpter and he could have filed an admin claim for  
11 that -- for that claim.

12 MS. HAFLEY: That's correct, Your Honor.

13 THE COURT: Okay.

14 MR. SUMPTER: And, Your Honor, can I ask a  
15 question here? You -- in your order back in the OPEB  
16 order in 2009 --

17 THE COURT: Right.

18 MR. SUMPTER: -- it stated that -- that  
19 benefits should be paid without having to file an  
20 administrative claim. So wouldn't that apply here?

21 THE COURT: Well, what is your response to  
22 that, Ms. Haffey? I -- that's in the OPEB order, does  
23 contemplate sort of the ordinary course running out of  
24 the benefits.

25 MS. HAFLEY: My response to that, Your Honor,

1 is that it's putting the cart before the horse. That  
2 that order, and my reading of the intent of that order,  
3 is that if there is a benefit owed and due to an  
4 employee that they need not file a claim. There was  
5 not a benefit that was due here, and that's what the  
6 denial of the claim was based on, there is no benefit,  
7 and that's what the denial of the administrative claim  
8 was by the reorganized debtors in which this Court then  
9 entered the order expunging the claim. There was no  
10 benefit. So it's putting the cart before the -- the  
11 cart before the horse.

12 THE COURT: Well, I understand that as far as  
13 -- as far as it goes, and I think it goes generally to  
14 Mr. Sumpter's claims, I think it goes to claims one,  
15 two, and three. If the only -- I understand you're  
16 making two defenses to claim four. But if the only  
17 defense that I'm accepting or buying is that the claim  
18 was late, if the OPEB order actually doesn't require  
19 him to file a claim then it's not late.

20 MS. HAFLEY: I agree, Your Honor. But again,  
21 I read that order as saying if the person is entitled  
22 to a benefit then they don't need to file a claim. But  
23 there's no entitlement to a benefit here, so the order  
24 doesn't apply.

25 THE COURT: But again, the benefit we're

1 talking about here is not a benefit under the plan,  
2 rather it is a right to a prompt determination of an  
3 appeal.

4 MS. HAFLEY: Of a particular benefit though.

5 THE COURT: I understand, but it's still a  
6 determination to --

7 MS. HAFLEY: Okay. It gets circular.

8 THE COURT: -- it's a right to a  
9 determination. I mean the appeal could be a complete  
10 looser, but I think under ERISA you still have a right  
11 to know that within 45 days. I'm not sure what the  
12 damages would be. And --

13 MS. HAFLEY: I guess my other --

14 THE COURT: -- also I'm not sure whether  
15 since it was a claim that arose in 2009 whether the  
16 discharge order might still apply, but I don't think  
17 the bar date order would necessarily apply. I think --  
18 I think Mr. Sumpter is right on that point.

19 So, I guess -- I don't know -- I have no idea  
20 what the damages would be. I can't believe it would be  
21 the \$100,000, because your right to a prompt  
22 determination is -- if you don't get that I don't know  
23 if there's a penalty for that under the regulars or  
24 statutes, I don't know if there's a right to actual  
25 damages. I just don't know.

1 But it seems -- so then let me turn to the  
2 second point is I imagine you would also say that  
3 notwithstanding the OPEB order if you do -- well, you  
4 may be saying it's not even a benefit, it's just a  
5 right under ERISA,. But I don't think the OPEB order  
6 -- in fact it couldn't, because it was well before the  
7 modified plan confirmation order and the discharge went  
8 into effect, doesn't exempt these claims from  
9 discharge.

10 So I guess there's still the final point,  
11 which is that this is in fact a pre-effective date  
12 claim and therefore covered by the discharge.

13 MS. HAFLEY: That's correct.

14 THE COURT: Mr. Sumpter, I'm not aware of any  
15 -- I know -- I understand the OPEB order says what you  
16 say it says, it does do that, but I don't think there's  
17 any provision in the confirmation order -- that is the  
18 modified approval order from July 30, 2009 -- that  
19 exempts these rights from the discharge.

20 MR. SUMPTER: I guess I don't understand  
21 that. I guess --

22 THE COURT: Well, it's pretty -- I don't  
23 blame you, it's pretty -- it's pretty abstruse. But --  
24 well, it would still -- even though it's discharged it  
25 would still be an admin claim.



1 MS. HAFLEY: Uh-huh.

2 THE COURT: You couldn't enforce it in any  
3 other way expect through the plan. So to me I think  
4 that one may survive.

5 MS. HAFLEY: But I go back then, Your Honor,  
6 that it's only an admin claim if he actually has a  
7 benefit, and there is no benefit here.

8 THE COURT: Well, but is it a benefit? I  
9 mean it is -- it's a separate -- to me I view this as a  
10 procedural right.

11 MS. HAFLEY: But it's a procedural right  
12 based on a benefit that he doesn't have.

13 THE COURT: But it's a right to a prompt  
14 review. So maybe I need more briefing on this. But it  
15 would seem to me that the right shouldn't only apply if  
16 the review is positive.

17 MS. HAFLEY: I would happy to give more  
18 briefing to the Court on this.

19 THE COURT: Okay.

20 MS. HAFLEY: I think that would --

21 THE COURT: I mean then it wouldn't really be  
22 much of a right because you'd get the benefit any way.

23 So I think there's -- it should apply whether  
24 the review is positive or negative. You have to -- it  
25 sets up a timetable, you know, and you go from the

1 benefit review to the appeal by the plan administrator  
2 to -- you know, you keep exhausting your remedies, but  
3 Congress wanted it or the -- not Congress -- the  
4 regulator -- ERISA -- PBGC wanted that step to proceed  
5 within specific time frames, and for this step it was  
6 45 days --

7 MS. HAFLEY: Right.

8 THE COURT: -- so it would seem to me that it  
9 -- the right isn't contingent upon you being the winner  
10 at the end of the day as to whether you have a benefit  
11 or not. But I guess I better hear more briefing on  
12 that.

13 MR. SUMPTER: Well, let me just make one  
14 comment on that. Is that the only reason I have an  
15 issue about failure to respond is it already said I  
16 didn't have -- that I wasn't entitled to the benefit.  
17 I mean that's why I appealed. And so --

18 THE COURT: Right. No, I -- I mean I'm  
19 leaning your way on this --

20 MR. SUMPTER: Right.

21 THE COURT: -- I appreciate that it's not  
22 really fully dealt with and I might want some more -- a  
23 supplement to be submitted on whether I should be leans  
24 your way on this point, because I raised it, no one  
25 else has really raised this specific issue. But I

1 understand your point on this one.

2 I'm not sure what the -- I mean frankly I'm  
3 not sure what the damages are for it being late. I  
4 would -- I would find it hard to believe that it would  
5 be the underlying amount you're seeking that that --  
6 that doesn't seem to make sense, but in any event.

7 So that's the fourth cause of action.

8 The fifth one is against MetLife and that's  
9 really not part of this, right?

10 MS. HAFLEY: That's correct, Your Honor.

11 THE COURT: So just to be clear if the debtor  
12 -- if DPH wins on this motion Mr. Sumpter would still  
13 be free to pursue this action against MetLife in the  
14 Indiana District Court as far as the fifth cause of  
15 action is concerned. And I guess any of these causes  
16 of action. Is that right? Or is it just the fifth  
17 one?

18 MS. HAFLEY: Well, I expect that MetLife will  
19 then file a motion to dismiss in the court based on  
20 arguments of privity with res judicata. You're right.

21 THE COURT: Fine. But that would be --

22 MS. HAFLEY: But that would be for that  
23 judge.

24 THE COURT: That would be for the Indiana  
25 court.

1 MS. HAFLEY: That's correct.

2 THE COURT: Okay. So then --

3 MS. HAFLEY: That's at least how I see it.

4 THE COURT: So then there's the sixth cause  
5 of action which is breach of fiduciary duty, and I mean  
6 we've -- it's basically -- this is paragraph 13, 13(b)  
7 and (c) I think is just another way of talking about  
8 the 1996 summary plan description and the summary of  
9 material modification. (d) is it failed to permit  
10 MetLife to institute -- it failed by permitting MetLife  
11 to institute an unreasonable claims procedure. And  
12 then (a) is that a full and fair appeal process. And I  
13 guess both of those, other than this issue that we've  
14 just been talking about with regard to the fourth cause  
15 of action, are also rooted in the bankruptcy -- in  
16 prebankruptcy past as opposed to something that's after  
17 the -- after the proof of claim or after the -- you  
18 know, basically that.

19 MS. HAFLEY: All four of those subsections.

20 MR. SUMPTER: Excuse me, Your Honor?

21 THE COURT: Yeah.

22 MR. SUMPTER: Are you saying that (a) is  
23 rooted in the --

24 THE COURT: No, no. I'm saying that other  
25 than we've just been talking about --

1 MR. SUMPTER: Oh, okay.

2 THE COURT: -- your claim number four it  
3 would be.

4 MR. SUMPTER: Oh, okay.

5 THE COURT: I understand to the extent it  
6 subsumes claim number four and to the extent (d)  
7 assumes claim number four then I understand there'd be  
8 an overlap as to the timely appeal process. But I'm  
9 not sure there's any other --

10 MR. SUMPTER: Well, no, (d) actually does not  
11 have to do with timely appeal.

12 THE COURT: Okay.

13 MR. SUMPTER: (d) has to do with the fact  
14 that in order to submit my -- my claim I had to pay a  
15 fee -- I had to pay a doctor to fill out a form. And  
16 ERISA states that I shouldn't have to pay any kind of  
17 fee in order to submit my claim.

18 THE COURT: Okay.

19 MR. SUMPTER: And that's what (d) has to do  
20 with.

21 THE COURT: But when did that happen? When  
22 did you --

23 MR. SUMPTER: That happened in March of 2009.

24 THE COURT: Okay.

25 MR. SUMPTER: Or early April.

1 THE COURT: Okay.

2 MR. SUMPTER: It might -- it either happened  
3 -- it may have happened early April because they -- you  
4 know, I filed my request in March, then they sent me  
5 the form, and then I had to give it to the doctor to  
6 fill out. So somewhere between March say 15th and  
7 April 8th.

8 THE COURT: All right. So to me though --  
9 again, this is not about the merits, this is about  
10 timing.

11 MR. SUMPTER: Yes.

12 THE COURT: And the timing there is such that  
13 you could have known at that time that that was  
14 wrongful of the plan administrator to require and  
15 therefore it really was part of the -- I think the  
16 claim that's already been determined. I mean you filed  
17 a claim in July.

18 MR. SUMPTER: Well, I suppose -- I guess I  
19 can't entirely argue with you on that. Is that I could  
20 have known -- had been able to delve into the ERISA  
21 law --

22 THE COURT: Right.

23 MR. SUMPTER: -- with the kind of detail I've  
24 done in the last --

25 THE COURT: Well, I appreciate that, but the

1 law in the Second Circuit and in most courts, in fact  
2 it's even perhaps more broad in the Third Circuit, is  
3 that -- and this is a quote:

4 "A claimant's knowledge that it had been  
5 damaged is irrelevant on the question of whether a  
6 cause of action meets the statutory definition of  
7 claim. The key thing is whether the claim is  
8 susceptible to detection."

9 So -- and that's really based just on a --  
10 you know, a reasonable person standard, and I think  
11 it's susceptible to detection.

12 I mean the broadest example of this where,  
13 you know, one might second guess the courts, but I'm  
14 not allowed to because they're more senior than I am,  
15 is where people live next to a toxic dump and don't  
16 really know about it, although I guess they could have  
17 known about it by looking and digging in the soil but  
18 they didn't, and the courts have said, well, that's  
19 still a prebankruptcy claim because they were injured  
20 prebankruptcy.

21 This is a little more than that because they  
22 did ask you to file this form and pay the money as part  
23 of that, and one could have asked, well, why do I have  
24 to pay the money? Okay.

25 MS. HAFLEY: We have nothing further,

1 Your Honor.

2 THE COURT: Okay. All right, Mr. Sumpter, do  
3 you have -- do you have anything more? I mean I've  
4 read your -- I've read your two pleadings, your letter  
5 and your response, and you make other arguments in that  
6 response that I've considered, including jurisdictional  
7 arguments, which I'm happy to address, but I have  
8 considered those already.

9 MR. SUMPTER: Well, no, if you've read them  
10 and considered them then I think that's all I have to  
11 say.

12 THE COURT: Okay.

13 MR. SUMPTER: Other than I guess I want to  
14 reemphasize that I did not receive any notification  
15 regarding the expungement of --

16 THE COURT: You mean the objection?

17 MR. SUMPTER: Yeah.

18 THE COURT: The claim objection?

19 MR. SUMPTER: Yes.

20 THE COURT: Okay. All right. But you do see  
21 where the debtors have provided their certificate of  
22 service where they say they served it on you. I mean  
23 do you dispute that that was the right address?

24 MR. SUMPTER: No, that is the correct  
25 address.



1 THE COURT: Okay.

2 MR. SUMPTER: But I do raise a point -- their  
3 certification of service as I read it, and I read that  
4 several times, is the -- they have me in the Exhibit F,  
5 but they say they sent those documents to the addresses  
6 in Exhibit E. And if I'm understanding that right then  
7 they -- if they sent that they sent it to -- my address  
8 wasn't in Exhibit E so they sent it somewhere else if  
9 you look at it -- if I understand that right, and I've  
10 tried to read that and tried to be accurate.

11 MS. HAFLEY: Mr. Sumpter --

12 MR. SUMPTER: They say they sent the  
13 documents in Exhibit F to the addresses in Exhibit E.

14 MS. HAFLEY: Mr. Sumpter, let me respond to  
15 that. And it is a confusing affidavit of service, I  
16 can understand how a layperson, a non-lawyer might not  
17 understand it as well.

18 The Exhibit F that your name appears on is a  
19 subpart to Exhibit E to the affidavit of service. So  
20 when it refers to Exhibit E -- and it's a voluminous  
21 document, you'd have to scroll through it to fully  
22 appreciate this -- when you scroll through Exhibit E  
23 you'll see there's Exhibit A, B, C, D, E, F, I think it  
24 goes through H doesn't it David, of Exhibit E, and he  
25 is on Exhibit F --

1 THE COURT: To Exhibit E.

2 MS. HAFLEY: -- to Exhibit E. That's  
3 correct.

4 THE COURT: Yeah, that how I read it too.  
5 Okay.

6 MR. SUMPTER: So are you saying I  
7 misunderstand that, my interpretation is incorrect?

8 THE COURT: Well, I think -- I think  
9 basically the reference to the service on Exhibit E is  
10 a big exhibit that includes the Schedules A through G  
11 of the people that whose claims are being objected to.

12 MS. HAFLEY: And they're titled exhibit  
13 instead of schedule, so it does make it confusion to  
14 Mr. Sumpter I'm sure.

15 THE COURT: Right.

16 MR. SUMPTER: Well, but each of those other  
17 exhibits they have -- like they sent some certain  
18 documents, like Exhibit A -- I don't have it right in  
19 front of me I'm just going from my rough memory -- they  
20 sent those overnight mail to somebody, in Exhibit B  
21 they did the same thing. And I think when they got  
22 down to Exhibit E they sent those by U.S. mail.

23 THE COURT: Right.

24 MS. HAFLEY: That's correct.

25 THE COURT: But Exhibit E covers the people

1 in -- what should have been said -- Schedules A through  
2 G as opposed to Exhibits A through G. But -- and  
3 you're on Schedule F or Exhibit F that Exhibit E refers  
4 to.

5 MS. HAFLEY: That's correct.

6 MR. SUMPTER: I think I'm on exhibit -- I  
7 understand it to be Exhibit F that Exhibit E refers to.

8 THE COURT: Right. Okay. All right.

9 MS. HAFLEY: Your Honor, would you like --

10 THE COURT: I'm going give you my ruling now.

11 One aspect of it I'm going make a preliminary  
12 ruling and I'm going to ask for some more briefing on  
13 it, and I may change the ruling based on the briefing.

14 I have before me a motion by the reorganized  
15 debtors for an order enforcing and in furtherance of  
16 three orders previously issued by this Court which  
17 would have the effect of enjoining Mr. Sumpter's  
18 continued pursuit of litigation against the reorganized  
19 debtors in the District Court for the Southern District  
20 of Indiana, which I'll refer to as the Indiana  
21 litigation.

22 The motion seeks to enforce the so-called  
23 modification procedures order which effectively  
24 confirmed the Chapter 11 plan for these debtors that  
25 actually went into effect and was consummated on

1           October 6, 2009. The modification approval order is  
2           dated July 30, 2009.

3                       As part of that order the Court issued an  
4           injunction and also recognized that the debtor would  
5           receive a discharge under Section 1141 of the  
6           Bankruptcy Code, and the injunction was in furtherance  
7           of that discharge that effectively enjoined any claims  
8           or causes of action arising on or before the effective  
9           date of the plan, which was October 6th, again of 2009.

10                      The debtors also seek to enforce as  
11           res judicata an order of the Court issued after the  
12           plan modification approval order that again the Court  
13           issued which disallowed the administrative expense  
14           claim that Mr. Sumpter filed in which he asserted a  
15           claim for failure to provide him with a liquidated  
16           benefit on a life insurance disability early payout  
17           claim.

18                      The claim was for \$97,788, and the debtors  
19           objected to it on the basis that they had no liability  
20           for such claim and that it was therefore not allowable,  
21           and the Court granted that objection there being no  
22           response by Mr. Sumpter on -- in an order entered  
23           December 2nd, 2009.

24                      And finally the Court entered a second  
25           administrative expense bar date order, that bar date

1 being November 5, 2009, that covered administrative  
2 expense claims arising after the first administrative  
3 bar date order and running through October 5, 2009.

4 Mr. Sumpter brought the Indiana action in  
5 early March of this year, and it asserts six claims  
6 under ERISA, and in fact is headed quote, "ERISA  
7 Benefit Denial Complaint."

8 The debtors in their motion before me are  
9 looking to preclude Mr. Sumpter from proceeding with  
10 five of the six claims asserted in that complaint.

11 Mr. Sumpter has opposed that motion on a  
12 number of grounds, and I will deal with the procedural  
13 and jurisdictional grounds first.

14 As an initial matter Mr. Sumpter contends  
15 that because his complaint asserts claims only under  
16 ERISA the District Court, that is the Indiana District  
17 Court, has exclusive jurisdiction under ERISA to  
18 determine such claims.

19 It has long been recognized however that the  
20 Bankruptcy Court as a unit of the District Court  
21 referred to it, among other things, core jurisdiction  
22 over the allowance and disallowance of all claims  
23 except where specifically provided in the Bankruptcy  
24 Code, which does not as an aside specifically exclude  
25 ERISA claims from that jurisdiction, and referred --

1 have referred to it by the district court core  
2 jurisdiction over the enforcement of a debtor's  
3 discharge, in fact has jurisdiction to determine ERISA  
4 claims.

5 That includes not only whether such claims  
6 are barred by the court's bar date orders as part of  
7 the claim administration process not only to determine  
8 the priority of the claims based upon the priority  
9 scheme of the Bankruptcy Code, including a  
10 determination of when the claim arose, i.e., whether  
11 pre or post-petition or post discharge, not only  
12 whether the claims are discharged or not but also the  
13 merits of the claim.

14 See, for example, Browning v. Levy, 283 F.3d  
15 761, 779, Sixth Circuit, 2002 and In re: Enron Corp.  
16 2004 Bankruptcy Lexus, 2549 Note 31, Bankruptcy  
17 S.D.N.Y., July 15, 2004.

18 The Court has also considered whether it has  
19 jurisdiction over the debtors' injunction motion, and I  
20 conclude that I do and that in fact that jurisdiction  
21 is core under 28 U.S.C. Section 157(b)(2).

22 The claims asserted by Mr. Sumpter, it is  
23 contended by the debtors, are either barred by the  
24 Court's procedural orders or by the discharge or by the  
25 doctrine of res judicata.

1           The Court clearly has the power to interpret  
2           and enforce such orders, particularly where they --  
3           whether the underlying dispute arises over a bankruptcy  
4           plan of reorganization or the order confirming that  
5           plan.

6           See Traveler's Indemnity Company v. Bailey,  
7           557 U.S. 137, 151 through 53, 2009; Celotex Corp. v.  
8           Edwards, 514, U.S. 300, 313, 1995, and In re: Petry  
9           Retail, Inc., 304 F.3d 223, 230, Second Circuit, 2004.

10          The Court also clearly has the power to  
11          enjoin conduct that would constitute a collateral  
12          attack on its prior orders.

13          See Celotex Corp. v. Edwards, 514, U.S. 313,  
14          as well as In re: Old Carco LLC, 438 Fed. Appendix 30,  
15          2011 U.S. App. Lexus 19217 at page 2, Second Circuit,  
16          September 19, 2011.

17          This specifically includes a recognition that  
18          the Court has subject matter jurisdiction to enjoin  
19          pursuit of claims in another court that are subject to  
20          a debtor's discharge.

21          See In re: Texaco, Inc., 2012 U.S. App. Lexus  
22          25853, Second Circuit, December 19, 2011.

23          Notwithstanding that clear jurisdiction  
24          prudential concerns need to be taken into account when  
25          a party to a proceeding in another court asks this

1 Court to enjoin further litigation in that other court,  
2 notwithstanding that this Court would have jurisdiction  
3 to do so.

4 See Time Warner Cable of New York City v. MD  
5 Electronics, Inc., 101 F.3d 278, Second Circuit, 1996.

6 However, based upon what I believe are  
7 uncontroverted facts the Indiana District Court is  
8 aware of the debtors' injunction motion before me and  
9 has in fact granted the debtors' motion for an  
10 extension of its time to answer in the Indiana  
11 proceeding until after this Court rules on the  
12 injunction motion.

13 I appreciate the Indiana court's deference on  
14 that point, particularly where I think it does in fact  
15 have jurisdiction to decide these issues in the context  
16 of the debtor asserting a defense even with respect to  
17 the claim that the Indiana action violates the  
18 discharge.

19 See -- or see In re: Baldwin-United Corp.  
20 litigation, 765 F.2d 343, 347, Second Circuit, 1985.

21 But in any event, I do not feel that I am  
22 violating principals of comity or more colloquially  
23 stepping on the Indiana court's toes by considering  
24 this motion today over which I believe I clearly do  
25 have jurisdiction.



1 I have carefully reviewed the claims in  
2 Mr. Sumpter's ERISA benefit denial complaint, which  
3 appears at Exhibit 4 to the debtors' motion, and also  
4 heard the parties' oral arguments on what those claims  
5 entail, and I conclude with one possible exception that  
6 they are in fact assertions of claims that either at  
7 this point are barred by the debtors' discharge and the  
8 injunction provisions in the plan modification order  
9 that preclude pursuit of such claims outside of this  
10 court or -- or and/or are barred by the doctrine of  
11 res judicata because of the Court's December 2, 2009  
12 order disallowing Mr. Sumpter's claim.

13 Let me address the res judicata point first.

14 Mr. Sumpter contends as a preliminary matter  
15 that that order was improperly entered and is not  
16 meritorious and that the debtors should not have sought  
17 such relief in the first place; however, it is a final  
18 order. It was not appealed and no request for  
19 reconsideration or vacature under Bankruptcy Rules 9023  
20 or 9024 was not -- were ever made.

21 His response to this motion does not make  
22 such a request and I will not deem it to be such a  
23 request.

24 Moreover, Mr. Sumpter argues in -- if such a  
25 request were made and the facts supported it I might

1 grant relief under Rule 9024, which would be the only  
2 rule that would apply to permit reconsideration of the  
3 order at this time given lapse of time since its  
4 issuance, that he did not receive notice of the  
5 debtors' claim objection.

6 I conclude that in fact there is a very  
7 strong presumption that he did receive notice of the  
8 claim objection.

9 The debtors have submitted a certificate of  
10 service that I believe shows that he did receive  
11 notice, and he has acknowledged that the address listed  
12 on that certificate is in fact his address. He states  
13 only that he in fact did not receive it and that mail  
14 has been known not to be delivered by the post office.

15 Unfortunately for Mr. Sumpter there is a  
16 strong presumption that in fact a pleading served by  
17 regular mail was in fact received notwithstanding  
18 assertions of non-receipt.

19 As Bankruptcy Judge Lane very recently ruled  
20 Federal Courts in New York have held, quote, "quite  
21 uniformly," close quote, that an affidavit of non-  
22 receipt is insufficient to rebut the presumption of  
23 receipt created by proof of mailing. In re: AMR Corp.,  
24 2013 W.L. 1721637 at page 2 of Bankruptcy S.D.N.Y.,  
25 April 22, 2013.

1                   This is in fact the case. See for example In  
2                   re: RH Macy Corp., 161 B.R. 355, 360, Bankruptcy  
3                   S.D.N.Y. 1993; In re: Horton, 149 B.R. 4958, Bankruptcy  
4                   S.D.N.Y. 1992; and Cable Vision Systems Corp. v.  
5                   Malandra, 206 B.R. 667, 673, Bankruptcy E.D.N.Y. 1997,  
6                   and the cases cited therein.

7                   So even if I were to deem the response as a  
8                   motion under Rule 9024 and separate and apart from the  
9                   issue of the substantial amount of time that's gone by  
10                  since the December 2, 2009 order, the basis for the  
11                  motion -- the procedural basis for such a motion, i.e.,  
12                  that the claimant wasn't served would not hold water,  
13                  and I do not believe given the policy underlying Rule  
14                  9024 that the arguments on the merits would lead to  
15                  reconsideration and vacature of that order.

16                  It is clear under the law generally and  
17                  certainly the law of this circuit that under the  
18                  doctrine of res judicata or claim preclusion a final  
19                  judgment on the merit to an action precluded the  
20                  parties or they're privies from relitigating issues  
21                  that were or could have been raised in that action.  
22                  EDP Med Computer Systems, Inc. v. U.S., 480 F.3d 621,  
23                  624, Second Circuit, 2007.

24                  Res judicata bars the filing of a subsequent  
25                  claim if the earlier decision was a final judgment on

1 the merits by a court of competent jurisdiction in a  
2 case involving the same parties or their privies and  
3 for involving the same cause of action. ID see also In  
4 re: DPH Holdings Corp., 468 B.R. 603, S.D.N.Y, 2012 at  
5 page 618.

6 In reviewing Mr. Sumpter's complaint in the  
7 Indiana action I conclude that with one possible  
8 exception he is raising causes of action that although  
9 denominated under ERISA were or could have been raised  
10 as part of his defense of the debtors' claim objection  
11 which states that again Mr. Sumpter is not entitled to  
12 an administrative claim for the \$97,000 and change that  
13 he's asserted under the debtors' benefits plans.

14 The claims generally also are time barred by  
15 the first bar date order established by the Court of  
16 which it is clear Mr. Sumpter had notice based on his  
17 own inquiries of the claims administrator.

18 Mr. Sumpter correctly points out that under  
19 the Court's so-called OPEB order he did not have to  
20 file a claim for benefits, but with one exception, if  
21 in fact he did not have a claim for benefits then it  
22 wouldn't be a benefits claim, and he has asserted  
23 claims for benefits that the debtors had already denied  
24 in the June and July period.

25 The claims asserted in the first, second, and

1 third causes of action are all premised upon failure to  
2 comply with ERISA as it pertains to Mr. Sumpter's  
3 benefit claims against the debtors. They all seek  
4 essentially the same amount of money that was sought in  
5 Mr. Sumpter's proof of administrative claim. They  
6 assert \$100,000 rather than 97,775, but in his response  
7 to the debtors' motion before me today Mr. Sumpter has  
8 stated that his original claim was inaccurate and that  
9 it should have been for \$100,000.

10 That cause of action like causes of actions  
11 one through three in the complaint are all rooted in  
12 the prebankruptcy past or at best in the pre-July 15th  
13 and certainly pre-October 6, 2009 period as laid out on  
14 the record of this hearing.

15 The reach of Section 1015 of the Bankruptcy  
16 Code, which defines very broadly the term claim and  
17 therefore the reach of the discharge injunction, covers  
18 claims rooted in such period whether or not the  
19 claimant actually knew of them as long as they were  
20 quote, "susceptible to detection."

21 I find and conclude based on the record of  
22 this hearing that the claims asserted in claims one  
23 through three of Mr. Sumpter's complaint of the Indiana  
24 action all fit that description.

25 See generally In re: Leer Corporation, 2012

1 Bankruptcy Lexus 440, Bankruptcy S.D.N.Y., February 10,  
2 2012 at pages 23 through 29, and the cases cited  
3 therein, including In re: Shadow Gay (ph) Corp., 944  
4 F.2d 997, Second Circuit 1991 In re: Texaco 182 B.R.  
5 -- excuse me -- 182 B.R. 937, Bankruptcy S.D.N.Y.,  
6 1995; and In re: Envirodyne Industries, Inc., 214 B.R.  
7 338, N.D. Illinois, 1997.

8 So whether it is based on principals of  
9 res judicata or based upon the applicability of the  
10 Court's first administrative bar date order or frankly  
11 its unsecured claims bar date order previously issued  
12 in this case or the discharge and injunction provisions  
13 in the Court's plan modification order those claims  
14 either are barred by res judicata or the discharge and  
15 injunction provisions of the confirmation order as they  
16 could have been raised as part of the response to the  
17 debtors' claim objection or subject to detection before  
18 the discharge.

19 To the extent in cause of action number six  
20 Mr. Sumpter is asserting a breach of fiduciary duty  
21 claim based upon the same facts, the same timing  
22 analysis applies, and those claims also would be barred  
23 by the Court's prior orders.

24 As we went through during oral argument that  
25 would apply to the claims described in paragraph 13(b),

1 (c), and (d) asserted by Mr. Sumpter, all of which  
2 arose either in the prebankruptcy period or in the  
3 period preceding the claim objection in the Court's  
4 December 2, 2009 order granting that objection, and  
5 also preceding the Court's discharge order.

6 Mr. Sumpter has also asserted that the  
7 debtor, as plan administrator -- or a debtor as plan  
8 administrator and/or a debtor in control of that plan  
9 administrator improperly delayed its response to his  
10 appeal of the denial of his right to the cash out.

11 As a timing matter it's agreed that the  
12 appeal should have been responded to within 45 days,  
13 it's also agreed when the appeal was made, and  
14 therefore that the 45 days would have run by  
15 September 14th, 2009. It's also acknowledged that  
16 there was no response by that date.

17 The debtors contend however that first, the  
18 claim objection order acts as res judicata on this  
19 cause of action, and second, that even if it does not  
20 the claim is time barred because Mr. Sumpter knew of it  
21 or should have known of it and could be deemed to have  
22 detected the breach as of September 15th with plenty of  
23 time for him to file a timely administrative claim for  
24 the -- before the November 5th administrative claims  
25 second bar date.

1 And finally the debtors would contend that  
2 the plan injunction channels Mr. Sumpter's pursuit of  
3 such a claim to this Court and that the claim is  
4 discharged, albeit that it would have to be paid under  
5 the plan if it's allowed.

6 As I said during oral argument unlike the  
7 other claims asserted by Mr. Sumpter, which are all  
8 rooted in the period before he filed his proof of  
9 claim, most of which go back to the prepetition period,  
10 this claim actually only arose after he filed his proof  
11 of claim. In fact although he referred in the proof of  
12 claim to his intention to appeal he had not even yet  
13 started the appellate period when he filed his claim.

14 Therefore, I do not believe that the Court's  
15 December 2, 2009 claim objection order would be  
16 res judicata for this particular claim.

17 Mr. Sumpter I believe also correctly states  
18 that where he actually has a right under the debtors'  
19 benefit plan or plans, which here incorporate ERISA and  
20 require a 45-day response to an appeal, he was excluded  
21 by the Court's OPEB order from having to file any proof  
22 of claim therefore.

23 I have not seen any response to that point  
24 other than the debtors' contention that as with the  
25 other claims he's putting the cart before the horse to



1 say that he has a right to this. But unlike the other  
2 ones where it was clear before the bar date that the  
3 debtor was taking the position he did not have the  
4 right to the claim the debtor had taken no such  
5 position in respect of his appeal that it didn't have  
6 to respond within 45 days.

7 And so therefore, I conclude that with  
8 respect to this particular claim Mr. Sumpter did not  
9 have to comply with the second bar date order.

10 That still leaves the issue of whether the  
11 claim is in fact covered by the specific terms of the  
12 OPEB order, i.e., whether it is in fact a benefit  
13 claim. And while I think it is on a preliminary basis  
14 I'll give the debtors time to brief that issue.

15 I also conclude on a preliminary basis that  
16 notwithstanding the OPEB orders provision that benefit  
17 claims do not have to be filed as proofs of claim --  
18 and I'm using shorthand to express terms of the order  
19 govern -- I do not believe that there's any provision  
20 of the plan modification order that exempts benefit  
21 claims from the plan injunction or from the discharge.

22 Consequently, even if I conclude as a final  
23 matter, after having read the supplemental briefing on  
24 this, that Mr. Sumpter does still have a claim based on  
25 the failure to respond within 45 days, that is a claim

1           that is not either time barred or barred by  
2           res judicata, I still believe that claim needs to be  
3           liquidated in this court and paid pursuant to the plan.  
4           It cannot be liquidated elsewhere or paid pursuant to  
5           an order of another court, which is obviously what he's  
6           attempting to do in the Indiana District Court  
7           litigation.

8                       Therefore, I will grant the injunction of  
9           this claim also, but I will not find that it is barred  
10          by res judicata or the second administrative claims bar  
11          date order, except if I'm convinced by the supplemental  
12          briefing that I'm going to ask for.

13                      I think it may make sense to consider whether  
14          there's any measure of damages also for such a claim in  
15          that supplemental briefing.

16                      So I will give the debtors 30 days to brief  
17          those issues, and I'll give Mr. Sumpter 30 days to  
18          respond, and then I doubt I will have oral argument on  
19          it, I will in all likelihood, if I agree with my  
20          preliminary analysis, simply make that my final ruling  
21          on this particular claim, which is claim number four,  
22          or if I change my mind I will issue an order  
23          accordingly.

24                      So I'm looking for two things from the  
25          debtor. First an order granting the motion for an

1 injunction with regard to claims one through four and  
2 claim six. You should email a copy of that to  
3 Mr. Sumpter, but you don't need to settle it formally  
4 on him, it's really a straightforward injunction for  
5 the reasons stated by the Court on the record.

6 Secondly, within 30 days of today I'll look  
7 for a supplemental brief on the issue of the effect of  
8 the OPEB order on the second bar date with respect to  
9 this claim, claim number three -- I'm sorry, claim  
10 number four, excuse me, claim number four.

11 And secondly whether in any event the claim  
12 is subject to the injunction -- no, I'm sorry --  
13 subject to -- strike all of that.

14 And secondly what the proper measure -- not  
15 the amount, but the measure of damages would be for  
16 such a claim.

17 And then after you serve it on Mr. Sumpter he  
18 will have 30 days to reply to those two points.

19 Unlike most filings before the Court I would  
20 like you to email these to chambers -- these  
21 supplemental briefs, because otherwise I will have  
22 forgotten about it and I won't be checking the docket  
23 for them. So you should email them to chambers and  
24 remind me in the cover letter why I had asked you to  
25 submit the supplemental briefing.

1 MS. HAFLEY: Just one point of clarification,  
2 Your Honor. The last claim that had (a), (b), (c), and  
3 (d) at --

4 THE COURT: Right.

5 MS. HAFLEY: -- 6(a) --

6 THE COURT: Right. (a) is subsumed within  
7 this. You can refer to 6(a) as well as to the extent  
8 that it incorporates four.

9 MS. HAFLEY: All right.

10 THE COURT: Otherwise there's no basis --

11 MS. HAFLEY: Very good.

12 THE COURT: -- and res judicata applies,  
13 which you can put in the -- in the injunction order.

14 MS. HAFLEY: Thank you.

15 THE COURT: Okay. Okay, Mr. Sumpter, do you  
16 have any questions about procedurally what's going  
17 happen next?

18 MR. SUMPTER: No, I don't.

19 THE COURT: Okay. All right. So they will  
20 -- they'll email you a copy of the order when they  
21 email it -- well before they email it to me, but  
22 they'll be emailing it to me shortly thereafter and  
23 I'll see whether it's consistent with my ruling.  
24 They'll submit this supplemental brief 30 days from now  
25 and then you'll have 30 days to submit it, both serve

1           it on them and then email it to chambers and file it on  
2           the docket of course 30 days after you get it from  
3           them.

4                   MR. SUMPTER: All right.

5                   THE COURT: Okay?

6                   MR. SUMPTER: Do you have time for me to ask  
7           a couple of questions?

8                   THE COURT: Okay.

9                   MR. SUMPTER: 13(a) -- in paragraph 13(a)  
10          which is part of the sixth cause of action.

11                  THE COURT: Right.

12                  MR. SUMPTER: I think I heard you say it was  
13          subsumed in part four?

14                  THE COURT: Well, I'm concluding that other  
15          than as it is subsumed in claim number four you are --  
16          you are barred by res judicata and/or the bar date  
17          orders and the discharge. So I'm only focusing on  
18          really this 45 days too late claim for both purposes of  
19          -- that I think are still open for purposes of my  
20          ruling.

21                  MR. SUMPTER: Okay. I want -- I mean I don't  
22          challenge your rulings, I mean, you know, you do -- I  
23          mean you're thorough so I don't question that, I just  
24          -- this item in 13(a) happened in May of 2010.

25                  THE COURT: I understand, but that's --

1 again, that's the preclaim past. So everything that  
2 falls into the preclaim past, whether it's  
3 prebankruptcy or post-bankruptcy, is either barred by  
4 res judicata or the bar date order.

5 The only thing that doesn't fall into that  
6 that I can see is the 45-day period issue. Because  
7 even though you learned about these things in 2010 when  
8 they -- when you eventually learned of the 1996 SPD --

9 MR. SUMPTER: Right.

10 THE COURT: -- it was susceptible to  
11 detection well before that. In fact it was susceptible  
12 to detection before the bankruptcy, and in any event it  
13 was clear when Delphi disputed your right to this  
14 payment based on its own SPD that that was what it was  
15 relying on.

16 So really in many respects this 1996 point is  
17 moot because no one is relying on it, but in any event  
18 it falls into that period that could have been detected  
19 during the preclaim period at least, if not  
20 prepetition.

21 So that's why I -- even though you say it --  
22 you didn't know about it until 2010 I don't think under  
23 the case law that I cited to you that matters. What  
24 matters is whether it could have been detected before  
25 then or whether it arose in the context of that period,

1 and I think it does.

2 MR. SUMPTER: Well, in terms of 13(a) though  
3 this has to do with they didn't allow me to -- they  
4 didn't give me the second appeal.

5 THE COURT: No, but that's what's I'm  
6 covering.

7 MR. SUMPTER: Oh, okay.

8 THE COURT: I'm saying that is part -- that  
9 and claim number four, that's what I think you're  
10 probably going to win on, although I'm giving the  
11 debtors a chance to submit something to convince me  
12 otherwise and you the chance to reply to it.

13 But my preliminary ruling says you probably  
14 will have a claim under cause of action number four,  
15 and to the extend it's subsumed in that paragraph 13(a)  
16 also under that paragraph, although you can't recover  
17 twice for it.

18 MR. SUMPTER: I understand.

19 THE COURT: And however that claim is covered  
20 by the plan injunction. So -- and the discharge. So  
21 you could only liquidate it here.

22 MR. SUMPTER: Okay.

23 THE COURT: But unlike the other claims I'm  
24 not finding -- well, I'm finding the other claims on a  
25 final basis. On a preliminary basis I'm not finding

1 this one is in fact barred by res judicata or one of my  
2 other orders. I think it probably isn't, although I'm  
3 going to give the debtors a chance to prove otherwise.  
4 The other claims I think are barred and I'm so finding  
5 by res judicata and my prior orders.

6 MR. SUMPTER: I understand now.

7 THE COURT: Okay. All right.

8 MR. SUMPTER: I do have a couple more  
9 questions just so I'm sure.

10 Claim one -- I'm sorry -- cause one --

11 THE COURT: Right.

12 MR. SUMPTER: -- it was against the plan DPH  
13 and MetLife. So your injunction --

14 THE COURT: It doesn't apply to MetLife.

15 MR. SUMPTER: Right.

16 THE COURT: None of these claims as they  
17 apply to MetLife will be enjoined, and the order should  
18 make that clear.

19 MS. HAFLEY: Yes.

20 THE COURT: And Ms. Haffey has acknowledged  
21 that.

22 MR. SUMPTER: Okay. And I have one other  
23 question. Is there any help for me as far as expunging  
24 my social security number?

25 THE COURT: Yeah, I -- well, I mean the



1 damage is -- some of the damage has been done --

2 MR. SUMPTER: Right.

3 THE COURT: -- but I'm going to ask the  
4 debtors' counsel to go up to the clerk's office and see  
5 if it cannot be expunged on a going forward basis.

6 MR. SUMPTER: Thank you.

7 THE COURT: Okay. I think they'll be able to  
8 do that. They can't go back and scrub everything -- I  
9 mean it's out there somewhat, but they can scrub what's  
10 on the docket.

11 MR. SUMPTER: Right. Okay. I know of just  
12 two cases. The one case I only knew because of  
13 Ms. Haffey pointed out, but I -- you know, I didn't  
14 realize that when I submitted that claim it was going  
15 to get docketed. I mean not just because I was  
16 naive --

17 THE COURT: That's fine. I understand. But  
18 we'll try to -- I'm instructing the debtors to speak to  
19 the clerks after we finish up today to go upstairs to  
20 the clerk's office and ask them to take it off the  
21 docket. And my clerk who's here will follow up on  
22 that.

23 MR. SUMPTER: All right, thank you very much.

24 THE COURT: Okay. I think they have a  
25 mechanism where they can put a black -- you know, a

1 black bar over it.

2 MR. SUMPTER: All right.

3 THE COURT: Okay. All right, very well,  
4 thank you.

5 MS. HAFHEY: Thank you, Your Honor.

6 MR. SUMPTER: Thank you.

7 (Whereupon these proceedings were concluded at 12:06  
8 PM)

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I N D E X

RULINGS

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Modification Procedures Order, Modified Plan  
and Plan Modification Order Injunction and  
Thirty-Seventh Omnibus Claims Objection  
Order Against James Sumpter, as Plaintiff,  
in Federal Court ERISA Action; and (II)  
Directing James Sumpter to Dismiss Federal  
Court ERISA Action Against the Reorganized  
Debtors and the Reorganized Debtors Life and  
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C E R T I F I C A T I O N

I, Dawn South, certify that the foregoing transcript is a true and accurate record of the proceedings.

AAERT Certified Electronic Transcriber CET\*\*D-408

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Date: April 29, 2013